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In The

Supreme Court of the United States

October Term, 1952

No. 351

United Construction Workers, Affiliated With United Mine Workers of America; District 50, United Mine Workers of America; Charles A. Neal, Elza Johnson and Sherman Blackshire, *Petitioners*,

vs.

National Labor Relations Board.

On Petition For Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR PETITIONERS

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I.

In its brief (pp. 6-8), National Labor Relations Board (herein called "Board"), opposing the petition for writ of certiorari, relies wholly upon *International Bro. of Electrical Workers* v. *National Labor Relations Board,* 341 U. S. 694, 705-706; but Board's counsel assiduously avoid directing the Court's attention to the fact that that case was concerned with an alleged violation of Section 8(b)(4)(A) of the Labor-Management Rela-

tions Act, 1947 [29 U. S. C. A., Section 158 (b)(4)(A)] and did not present for decision an involvement, as does the instant one, of a blanket order based upon an alleged violation of Section 8(b)(1)(A) of the Act [29 U.S.C.A., Section 158 (b) (1) (A)] whereby labor organizations and agents (petitioners) are ordered to cease and desist from

> "Restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act." (B.A. 88-89)

Hence, petitioners submit, the *Electrical Workers* case can have no applicability to the foregoing language found in paragraph 1.(b) of the Board's order.

The Board found (B.A. 86) that Section 8(b)(1)(A) had been violated solely because

> "The refusal of the pickets led by Johnson to permit George W. Bryant to continue with his work of unloading the timber on his truck because Bryant did not have a sticker on his truck indicating union membership, clearly deprived Bryant of his right under Section 7 of the Act to join, or refrain from joining, any labor organization."

Despite the Board's finding that such violation of Section 8(b)(1)(A) concerned only one employee and involved only one right under Section 7, and despite the fact that the blanket order found in said paragraph 1.(b) is as comprehensive and all-embracing in scope as the language of both Section 7 and Section 8(b)(1)(A), the Boards' brief (pp. 7-8) contains the gross misstatement of the record in its assertion that "In no instance, however, does the Board's order go beyond the class of activities of which petitioners' specific conduct is representative." Significantly, too, Board's brief is

silent on petitioners' challenge to said paragraph 1.(b) because it is *limitless as to the employees* covered in the language thereof. Furthermore, when it is considered that the Board found that only one employee had had one right violated, it is readily seen that the Board's argument that its order is requisite because of the "aggressive nature of petitioners' tactics" (brief, p. 8) is wholly abortive. Moreover, this argument of Board counsel lacks the requisite support of a Board finding and conclusion that a broad order is necessary. *May Dept. Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376; *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426; *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217.

Finally with respect to said paragraph 1.(b) which requires that petitioners cease and desist from "Restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act", it is submitted that when the Board asserts (p. 8) that the *Electrical Workers* case, supra, is the only analagous case to the present one, it fails to recognize that that case had no concern with an omnibus order relating to an alleged violation of Section 8 (b) (1) (A); and, further, the assertion (brief, p. 8) that petitioners "are simply mistaken in their concern * * * that a different principle is being applied in appraising the breadth of an order against a labor organization than is utilized where the order is against an employer" is challenged by cases which are discussed in petitioners' petition for the writ of certiorari and brief in support thereof (pp. 28-30; 48-54) and which are therein shown to be in conflict with the decision below. Without reviewing all such cases, it suffices, to show the fallacy of Board's contention, to direct the Court to *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217, 226, wherein the Court rejected a broad order against an employer, saying:

> "The Board's own finding as to the employer's interference with, and restraint and coercion of, its employees *is limited to this one item.*
>
> * * *
>
> "Accordingly, there appears no reason for enlarging the scope of the enforcement decree beyond that feature * * *." (Emphasis supplied),

and to *May Dept. Stores Co.* case (8 Cir., 146 F. 2d 66, 71), *Consolidated Machine Tool Corp.* case (2 Cir., 163 F. 2d 376, 379) and *Reliable Newspaper Delivery, Inc.* case (3 Cir., 187 F. 2d 547, 550 [footnote 4]), in each of which the Board was plaintiff and in which the respective courts restricted application of the Board's orders to specifically designated employees of specifically designated employers. In the instant case, the Board's order that petitioners cease from "Restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act" contains no restrictions or limitations—neither as to employees, employers, geographical area nor activities.

II.

The Board, relying upon the *Electrical Workers* case and opposing petitioners' contention that the inducement and encouragement provisions of paragraph 1.(a) of the Board's order should be limited to Carbon Fuel Company's employees, argues (brief, p. 7, footnote 2) that timbermen may in the future expand the number of their customers and they are entitled to the protection of the trade should it materialize. In *National Labor Relations Board* v. *Crompton-Highland Mills, Inc.*, 337 U. S. 217, 220, this Court stated, in part:

> "If a decree is to be issued, its scope and terms should be based upon such part, or all, of the Board's cease and desist order as is *supported by its findings of fact.*" (Emphasis supplied.)

In the instant case, the Board found that petitioners induced and encouraged the employees of Carbon—and none other. When Board's counsel argue (brief, p. 8) that the "aggressive nature of petitioners' tactics" requires the broad scope of the Board's order, it is pertinent that the Board itself made no such finding warranting the sweeping scope of its order. In the absence of such requisite Board finding and conclusion, the present argument is therefore contrary to the principle quoted from the *Crompton-Highland Mills* case. See also the *May Dept. Stores Co.* case (326 U. S. 376) and *Express Publishing Co.* case, *supra.*

In the cases which are cited and discussed in the petition for the writ and supporting brief (pp. 30-33, 39-48) and wherein this Court and federal Courts of Appeals rejected omnibus orders directed against *employer* unfair labor practices, the fact that other employees of the respective employers might require protection against a repetition of such practices did not result in the courts' approval of the blanket orders. Thus there was judicial rejection of the argument that protection should be granted in the event that the necessity therefor should materialize. These pronouncements are ignored by Board counsel when, in its brief, it urges upon this Court that "petitioners are simply mistaken in their concern * * * that a different principle is being applied in appraising the breadth of an order against a labor organization than is utilized where the order is against an employer". Petitioners submit that the Court of Appeals' judgment in the instant case that petitioners abide by and perform the Board's directions as contained in paragraph 1.(a) conflicts with such judicial pronouncements.

The Board argues, too, in its brief (p. 7, footnote 2) that if such an expansion does not occur, the breadth of the order cannot injure petitioners, so that they have no

basis for complaint. Such argument is not accordant with this Court's declaration in *May Dept. Stores Co.* v. *Board*, 326 U. S. 376, 388, that

> "* * * the possibility of contempt penalties by the court for future Labor Act violations adds sufficient additional sanctions to make material the difference between enjoined and nonenjoined employer activities",

where an order against an employer was being scrutinized. Board's argument invites a contrary rule where labor organizations and their agents are involved.

The *Electrical Workers* case involved an order against a labor organization. The inappositeness of such case to the one under consideration has been discussed in the petition and supporting brief (pp. 32, 43). Therein it is shown that since timbermen sell substantially all of their output to Carbon Fuel Company, the rationale used by the Court for the broad order in the *Electrical Workers* case has no applicability to the instant situation. Board's counsel ignore the facts, as shown in petitioners' supporting brief (p. 57) that the alleged act of encouragement occurred *only* at Carbon Fuel Company premises; that UCW's program is limited to organizing employees in the timber industry in its Region 23 which is shown to include only six counties in West Virginia; and that Carbon's premises is located in the southeast portion of one of said counties. The Board itself recognized that the geographical bounds of petitioners' activity was restricted to said Region 23. But the Board's order is not correlated to such factual situation. Unlike the instant case where petitioners complain that the language of paragraph 1.(a)(2)—which enjoins inducement where the object is to force or require "Carbon Fuel Company or any employer" (other than the five timbermen) "or other person" to cease using, etc. the five timbermen's

products—is too broad (see original brief, pp. 47-48), the Court's opinion in the *Electrical Workers'* case does not indicate that petitioners therein complained of the breadth of the language in the object portion of the order. Futhermore, paragraph 1.(a) of the present order concerns language relating to other objects of the alleged inducement and encouragement which were not considered in the *Electrical Workers* case. For example, in that case the Board's order directed the union and its agent to cease their inducement of employees to strike, where the object thereof was to force employers "to cease doing business *with Langer*". Thus there was a limitation to a designated primary employer. But, in the present case, paragraph 1.(a) of the Board's order directs petitioners to cease inducing the employees of all employers (other than the five timbermen) where an object thereof is "(1) to force or require *any employer or self-employed person* to join *any* labor or employer organization". (B.A. 88) Hence, there is no limitation as to "employer or self-employed person" or to "labor organization" or "employer organization". Also, the Board's order in the instant case directs that such inducement cease where an object thereof is "(3) to force or require" the five timbermen "to recognize or bargain with" UCW or District 50 "as the representative of their employees unless and until such labor organization has been certified as the representative of such employees under the provisions of Section 9 of the Act". (B.A. 88)

Petitioners submit that the *Electrical Workers* case does not, as Board's counsel assert, "squarely support(s) the decision below" and that the decision below is clearly in conflict with the cases cited and discussed in the petition and supporting brief (pp. 30-33; 39-48). In addition, it is to be noted that in the *Electrical Workers* case, the Board limited the acts of inducement and encouragement to "picketing or related conduct" where-

as paragraph 1.(a) of the Board's order proscribes every form of inducement and encouragement. (B.A. 88). In the *Electrical Workers* case (at page 701), this Court declared that "The words 'induce and encourage' are broad enough to include in them every form of influence and persuasion". Although the evidence and the Board's findings in the present case related only to the act of picketing at Carbon's premises and the Board, in the court below, argued that Section 8(b)(4)(A) and (B) had been violated *by picketing* Carbon's premises (see petition and supporting brief, pp. 17 and 44, footnote 24), said paragraph 1.(a) contains no such limitation. Hence, the *Electrical Workers* case challenges, rather than supports, the Board's position and the decision below.

CONCLUSION

Petitioners submit that the reasons assigned by the Board in its brief in opposition are wholly without merit, and petitioners re-assert that the petition for writ of certiorari should be granted.

Respectfully submitted,

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